

### **REMARKS/ARGUMENTS**

Reconsideration of the present application, as amended, is respectfully requested.

In the reviewing the specification, the applicant found a typographical error on page 12 and has amended the corresponding paragraph.

Of previously pending claims 1-25, claims 1, 2, 4, 5, 9, 10, 12 and 13 were rejected; and claims 17-25 were allowed. Claims 3, 6-8, 11 and 14-16 were objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Specifically, claims 1, 2, 5, 9, 10 and 13 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,785,225, which issued August 31, 2004 to T. Sugawara *et al.* Claims 4 and 12 were rejected under 35 U.S.C. §103(a) as being obvious over the cited Sugawara patent in view of U.S. Patent No. 6,810,011, which issued October 26, 2004 to M. Betts.

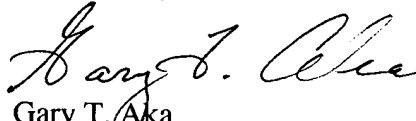
With respect to the rejection of independent claims 1 and 9 for anticipation by the cited Sugawara patent, the applicant has amended the claims with language, "signaling local repair of said failure using overhead information of said second hierarchical layer only." The system of the Sugawara patent does not operate in this manner, but rather both upper and lower layers are used for repair switching and information of both layers are exchanged at each layer. "...[A] decision part for coordinated switching is provided. The decision parts receive failure information from an upper and a lower layer and determine in which layer to make switching in accordance with failure conditions." Col. 7, lines 27-31, for example. See also, col. 8, line 63 to col. 9, line 20.

Hence independent claims 1 and 9 should be allowable. Dependent claims 2, 4, 5 (and 3, 6-8) should be allowable for at least being dependent upon allowable base claim 1, and claims 10, 12, 13 (and 11, 14-16) should be allowable for at least being dependent upon allowable base claim 9. In passing, it should be noted that the dependency of claim 11 was changed to claim 10 for language consistency.

New claims 26-33 were added and correspond to objected to claims 3, 6-8, 11 and 14-16 and hence should be allowable. That is, new claim 26 corresponds to previously pending claims 1-3; claim 27 corresponds to previously pending claims 1, 2 and 6, and so forth.

Therefore, in view of the amendments above and the remarks directed thereto, the applicant respectfully requests that all rejections be moved, that claims 1-33 be allowed and that the case passed to issue. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at (408) 868-4088.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary T. Aka".

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